INDEX TO APPENDIX

Page

Appendix A: Opinion of the United States Court of Appeals for the District of Columbia Circuit, dated October 5, 1973 (Order correcting Opinion found on page 8a-9a) 1a

Appendix B: Order of the United States District Court for the District of Columbia, entered April 26, 1973 ..... 10a

Appendix C: Complaint for Damages filed in United States District Court for the District of Columbia on February 18, 1971 ..... 12a

Appendix D: Motion to Certify Action to Superior Court filed in the United States District Court for the District of Columbia on April 13, 1973 ..... 20a

Appendix E: Answer in Opposition to Motion of Defendants to Certify Action to Superior Court filed in the United States District Court for the District of Columbia on April 23, 1973 ..... 22a

APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1279

DAVID LEE DEN HARTIGH,
Appellant
v.

JOHN LATIN, JR., ET AL.

No. 73-1740

MICHAEL H. MARSH,
Appellant
v.

WALTER W. HOLLINGSWORTH, ET AL.

On Appellant's Motion for Summary Reversal

Decided October 5, 1973

Alan Dranitzke was on the Motion for Summary Reversal in No. 73-1279.

John E. Vanderstar was on the Motion for Summary Reversal in No. 73-1740.

C. Francis Murphy, Corporation Counsel, *Richard Barton* and *David P. Sutton*, Assistant Corporation Counsel were on the opposition for appellee.

Before: BAZELON, *Chief Judge* and LEVENTHAL, *Circuit Judge.*

PER CURIAM: These cases both arise from complaints alleging excessive use of force and other violations of constitutional rights by named officers of the Metropolitan Police Department, their immediate supervisors, and the District of Columbia. Both cases were certified to the Superior Court of the District of Columbia, and it is from such transfers that these appeals are taken.

Because of the importance of the questions raised by these appeals, and the policy of the District Court which they reveal, we have thought it important to set forth the reasons for granting appellants' motions for summary reversal of those transfers.

Appellants asserted that jurisdiction over their claims below arose under both the Constitution and the Civil Rights Acts of the United States, in particular 42 U.S.C. §§ 1983 and 1985. Both appellants also asserted that the amount in controversy exceeded $10,000.

In *District of Columbia v. Carter*,[1] the Supreme Court held that 42 U.S.C. § 1983 does not apply to suits for damages arising under "color of law" of the District of Columbia, since the District of Columbia is not a "State or Territory" within the meaning of the statute. The District Court in both cases based the transfer of the actions to the Superior Court on the *Carter* decision.[2]

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[1] 409 U.S. 418 (1973).

[2] In No. 73-1279, the court below stated:

> In light of the *Carter* case, this will be certified to the Superior Court.
>
> . . . .
>
> This does not require a motion. That was the decision of the Judges of this Court, that these cases would be certified to the Superior Court.

In No. 73-1740, the court based its order on both the *Carter* de-

We believe that extension of the *Carter* case to be erroneous.

Jurisdiction below was also asserted in both cases on the basis of 28 U.S.C. § 1331(a) which provides:

> The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

The Supreme Court has held that under this provision the district courts have jurisdiction over disputes which involve alleged infringements of constitutional liberties by federal officers. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 395-96 (1971); *Bell v. Hood*, 327 U.S. 678, 685 (1946). Moreover, for the purpose of determining jurisdiction, such allegations are not to be interpreted harshly against the plaintiff:

> Before deciding that there is no jurisdiction, the District Court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. . . . [W]here the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court but for two possible exceptions . . . must entertain the suit. . . .
>
> . . . The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction where the alleged [federal question] . . . appears to be immaterial . . . or . . . wholly insubstantial and frivolous.[3]

---

cision and a finding that the action would not justify a judgment of more than $10,000.

[3] *Bell v. Hood, supra*, at 681-83.

In two recent cases, this court has found jurisdiction under 28 U.S.C. § 1331(a) over alleged police misconduct in depriving citizens of rights secured to them by the Fourth and Fifth Amendments. In *Sullivan v. Murphy*, this court specifically found that jurisdiction to consider equitable relief from police misconduct in the District of Columbia under § 1331(a) survives the *Carter* finding that such jurisdiction cannot be maintained under 42 U.S.C. § 1983.[4] In *Gomez v. Murphy*, where the appellant sought equitable relief against enforcement of the District of Columbia vagrancy statute on the grounds that it infringed his rights under the Fourth and Fifth Amendments, this court held that the controversy was one properly within the "federal question" jurisdiction of the court.[5]

However, the test for jurisdiction under § 1331(a) is both the existence of a federal question and determination of an amount in controversy of more than ten thousand dollars. When the amount claimed to be in controversy is asserted for jurisdictional purposes, the plaintiff's allegation is to be accepted unless "it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or . . . that the plaintiff never was entitled to recover that amount." *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938); *Gomez v. Wilson, supra; Spock v. David*, 469 F. 2d 1047, 1052 (3d Cir. 1972); *Gillentine v. McKeand*, 426 F. 2d 717, 720 (1st Cir. 1970); *Arnold v. Troccoli*, 344 F. 2d 842, 845 (2d Cir. 1965). Upon the record before us in these cases, we cannot find, to a legal certainty, that no recovery could satisfy the statutory standard in the cases before us.

Appellant Marsh alleged that on February 20, 1970, while he was standing in the lobby of his dormitory at

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[4] —— U.S. App. D.C. ——, 478 F.2d 938, 960 (1973).

[5] —— U.S. App. D.C. ——, 477 F.2d 411, 419 (1973).

George Washington University watching an antiwar demonstration, two police officers assaulted him and arrested him. Subsequently, they again beat him, took him to the local police station and booked him, and incarcerated him for approximately nine hours. His complaint below sought $10,000 in compensatory damages for physical injuries, mental anguish and medical bills. He also sought compensation for actual and prospective loss of earnings due to his injuries.

Plaintiff Marsh's allegations for the compensatory damages alone would seem to meet the statutory requirement. He submitted below an affidavit of medical bills totalling over $900, and computed lost compensation for summer work as $530. At the time of the alleged beating, he was a law student at George Washington University and he alleges that he will lose future earnings as a lawyer because of the effects of the beating. Plaintiff also sought $25,000 in punitive damages. It is clear that punitive damages should be considered in determining the jurisdictional amount in controversy. *Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943); *Barry v. Edmunds*, 116 U.S. 550, 562 (1886); *Davis v. Peerless Insurance Co.*, 103 U.S. App. D.C. 125, 129, 255 F.2d 534, 538 (1958). Finally, there is no record below that supports a finding of lack of good faith in alleging the jurisdictional amount. *Wood v. Stark Tri-County Building Trades Council*, 473 F.2d 272, 274 (6th Cir. 1973); *Deutsch v. Hewes Street Realty Corp.*, 359 F.2d 96, 100, 101 (2d Cir. 1966).

Appellant Hartigh alleged that while he was incarcerated in the jail of Metropolitan Police Force No. 8 he was beaten by police officers who broke his wrist. The complaint also alleged that appellant was imprisoned under conditions amounting to cruel and unusual punishment, and was subjected to denied the equal protection of the laws. Plaintiff below prayed for $100,000 in com-

pensatory damages and $100,000 in punitive damages. As in No. 73-1740, there was no record that these jurisdictional allegations of damages were disputed below.

The factual allegations of injury before this court are that appellant suffered a broken wrist and sustained medical bills of $24.00. In view of these very limited medical injuries, there may arise some question of the amount in controversy. However, appellant also claims the infringements of constitutional rights. Although infringement of these rights may be difficult of precise monetary evaluation, that does not make them non-justifiable under § 1331(a). *Spock v. David, supra; Wolff v. Selective Service Local Board No. 16*, 372 F.2d 817, 826 (2d Cir. 1967). This Court has accepted, for jurisdictional purposes, allegations of an amount in controversy exceeding $10,000 for twelve to fourteen hours of false imprisonment without physical injury. *Sullivan v. Murphy, supra*, at n. 34. Furthermore, Hartigh sought punitive damages below, and such damages are to be included in the amount in controversy for jurisdictional purposes. *Bell v. Preferred Life Assurance Society, supra.*

Where the plaintiff has asserted a denial of constitutional rights and more than $10,000 in damages, and where the defendant has not disputed the amount in controversey, the plaintiff is entitled to at least a hearing on the factual issue of whether or not the dispute reaches the jurisdictional amount. In this case, there was no factual or legal hearing on the issue of jurisdiction; the court merely stated:

> In light of the Carter case, this will be certified to the Superior Court.[6]

With regard to the actions against the superior police officers and the District of Columbia, since plaintiffs have made sufficient allegations to meet the statutory

[6] Tr. of Status Call on February 12, 1973, at 2.

minimum for jurisdiction in the action against the officers, they are entitled to invoke the doctrine of ancillary jurisdiction against the other defendants for negligence. *Marusa v. District of Columbia*, Slip Opinion No. 72-1027, 72-1140 (D.C. Cir. August 21, 1973).

In No. 73-1740, we vacate the order of April 26, 1973, certifying the case to the Superior Court and remand the case to the District Court for further proceedings. In No. 73-1279, we vacate the order of February 9, 1973, and remand the case for further proceedings.

So ordered.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1972

[Filed Oct. 5, 1973, United States Court of Appeals
for the District of Columbia Circuit
Hugh E. Kline, Clerk]

Civil Action 875-72
No. 73-1279

DAVID LEE DEN HARTIGH,
Appellant

v.

JOHN LATIN, JR., ET AL.

Civil Action 392-71
No. 73-1740

MICHAEL H. MARSH,
Appellant

v.

WALTER W. HOLLINGSWORTH, ET AL.

Before: Bazelon, Chief Judge, and
Leventhal, Circuit Judge

ORDER

It is ORDERED by the Court sua sponte that the opinion of October 5, 1973 is amended as follows:

Page 6, line 1, delete the comma after 100 and insert in lieu thereof, a dash.

Page 6, line 8, delete the words "subjected to".

Per Curiam
For the Court

/s/ Hugh E. Kline
HUGH E. KLINE
Clerk

[Received Oct. 10, 1973, Appellate Division, Corporation Counsel's Office]

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Apr. 26, 1973, James F. Davey, Clerk]
Civil Action No. 392-71

MICHAEL H. MARSH,
Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.
Defendants

ORDER

Upon consideration of the motion of defendants Hollingsworth, Heane, Wilson, and the District of Columbia to certify action to Superior Court of the District of Columbia, and the memorandum of points and authorities cited in support of and in opposition thereto, and it appearing to the Court that this action will not justify a judgment in excess of Ten Thousand Dollars, exclusive of interest and costs, and upon the authority of *District of Columbia* v. *Carter*, —— U.S. —— (No. 71-564, January 10, 1973), it is, by the Court, this 26th day of April, 1973,

ORDERED: That the above-captioned cause be, and the same is, hereby certified to the Superior Court of the District of Columbia.

/s/ Barrington J. Parker
Judge

I hereby certify that a copy of the foregoing proposed Order was mailed, postage prepaid, to Richard A. Earle, Esquire, 1200 - 17th St., N.W., Washington, D. C. 20036, this 13th day of April, 1973.

/s/ Marcus P. McGraw
Assistant Corporation Counsel, D. C.
Attorney for Defendants
District Building
Washington, D. C. 20004

[Received Apr. 27, 1973, Civil Proceedings Division, Corporation Counsel's Office]

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed February 18, 1971]

Civil No. 392-71

MICHAEL H. MARSH
3310 Landover Street
Alexandria, Virginia

Plaintiff

v.

WALTER W. HOLLINGSWORTH
(Badge #2624)
Metropolitan Police Department
Washington, D. C.

JOHN DOE #1
(Badge #2444)
Metropolitan Police Department
Washington, D. C.

OFFICER HEANE
Metropolitan Police Department
Washington, D. C.

JOHN DOE #2
Metropolitan Police Department
Washington, D. C.

JOHN DOE #3
Metropolitan Police Department
Washington, D. C.

JOHN DOE #4
Metropolitan Police Department
Washington, D. C.

JOHN DOE #5
Metropolitan Police Department
Washington, D. C.

JERRY V. WILSON
Metropolitan Police Department
Washington, D. C.

and

DISTRICT OF COLUMBIA, a
municipal corporation
District Building
Washington, D. C.

Defendants

COMPLAINT FOR DAMAGES

(Assault and Battery; False Imprisonment; Deprivation of Civil Rights; Conspiracy to Deny Equal Protection of the Laws)

1. Plaintiff is a resident of the State of Massachusetts. Defendants are residents of and/or are found in the District of Columbia. This action arises under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and under the Civil Rights Acts of the United States, in particular 42 U.S.C. §§ 1983, 1985, and additionally seeks redress for the deprivation under color of the laws, regulations, customs and/or usages of the District of Columbia of rights, privileges and immunities secured to plaintiff by the Constitution and laws of the United States. The amount in controversy exceeds $10,000, exclusive of interest and costs.

2. At all times relevant to this action, defendants Heane, Walter W. Hollingsworth and John Doe #1 were employed by and acting as police officers of the Metropolitan Police Department of defendant District of Columbia; defendant John Doe #2 was likewise employed

and acting and was the immediate supervisor of defendants Hollingsworth and John Doe #1 at the time of the events alleged herein; defendant John Doe #3 was likewise employed and acting and was the immediate supervisor of defendant John Doe #2, and thereby a supervisor of defendants Hollingsworth and John Doe #1 at the time of the events alleged herein; defendant John Doe #4 was likewise employed and acting and was in direct charge of processing and booking of arrested persons at the First Precinct; defendant John Doe #5 was likewise employed and acting and was the supervisor of defendant John Doe #4; and defendant Jerry V. Wilson was likewise employed and acting and was additionally Chief of said Department and thereby the ultimate supervisor of defendants Hollingsworth, John Doe #1, Heane, John Doe #2, John Doe #3, John Doe #4, and John Doe #5 at the time of the events alleged herein. Defendant District of Columbia is a body corporate for municipal purposes.

3. At all times relevant to this action, defendants John Doe #2 and #3, Wilson, and the District of Columbia were under a duty to train, instruct, supervise and control defendants Hollingsworth, John Doe #1, and Heane in the proper performance of their duties as police officers; defendants John Doe #5, Wilson, and the District of Columbia were under a like duty with respect to defendant John Doe #4; defendants John Doe #3, Wilson, and the District of Columbia were under a like duty with respect to defendant John Doe #2; defendants Wilson and the District of Columbia were under a like duty with respect to defendants John Doe #3 and John Doe #5, and defendant District of Columbia was under a like duty with respect to defendant Wilson.

Count I

4. On or about February 19, 1970, at approximately 5 p.m., in and about Madison Hall, a George Washing-

ton University dormitory located at 22nd and H Streets, N.W., in the District of Columbia, defendants Hollingsworth and John Doe #1 (Badge #2444), acting under color of law, regulation, custom and/or usage of the District of Columbia, and in their capacities as police officers thereof, committed an assault and battery upon plaintiff.

5. At the time of such assault and battery, plaintiff was, as defendants well knew, witnessing a demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

6. As a direct and proximate result of such assault and battery, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 5 and was thereby put in fear that similar action would be taken if plaintiff attempted to exercise such rights in the future.

7. Defendants Hollingsworth, John Doe #1, John Doe #2, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 6, with the intent to do so.

8. Defendants John Doe #2, John Doe #3, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 6 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally negligently failed in their duty to properly train, instruct, supervise and control defendants Hollingsworth and John Doe #1. Defendants

John Doe #3, Wilson and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #2; defendants Wilson and the District of Columbia failed to train, instruct, supervise and control defendant John Doe #3; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

9. As a further direct and proximate result of such assault and battery and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, including a head laceration and numerous bruises, and resultant nervous disorders, including colitis, pain, suffering, mental anguish and humiliation and incurred medical expenses.

Count II

10. On or about February 19, 1970, at approximately 5 p.m., in and about Madison Hall, a George Washington University dormitory located at 22nd and H Streets, N.W., in the District of Columbia, defendants Hollingsworth, John Doe #1, and Heane, acting under color of law, regulation, custom and/or usage of the District of Columbia, and in their capacity as police officers thereof, unlawfully arrested plaintiff.

11. At the time of such unlawful arrest, plaintiff was, as defendants well knew, witnessing a demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

12. As a direct and proximate result of such unlawful arrest, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 11 and

was warned that similar action would be taken if plaintiff attempted to exercise such rights in the future.

13. Defendants Hollingsworth, John Doe #1, Heane, John Doe #2, John Doe #3, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 12, with the intent to do so.

14. Defendants John Doe #2, John Doe #3, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 12 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally failed to train, instruct, supervise and control defendants Hollingsworth, John Doe #1, and Heane. Defendants John Doe #3, Wilson, and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #2; defendants Wilson and District of Columbia failed to train, instruct, supervise and control defendant John Doe #3; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

15. As a further direct and proximate result of such unlawful arrest and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, pain, suffering, deprivation of freedom, mental anguish and humiliation and incurred medical expenses.

Count III

16. On or about February 19, 1970, during the afternoon and evening hours, at the First Precinct of the Metropolitan Police Department of defendant District of Columbia, defendant John Doe #4, acting under color of law, regulation, custom and or usage of the District of Columbia, and in his capacity as a police officer thereof, utilized processing and booking procedures which

needlessly and unlawfully caused plaintiff to be detained at such Precinct far in excess of the time reasonably needed to accomplish such procedures and thereby falsely imprisoned plaintiff for such excess period.

17. At the time of plaintiff's arrest which caused him to be presented to defendant John Doe #4 for processing, plaintiff was, as defendants well knew, witnessing a lawful demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, and all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

18. As a direct and proximate result of such false imprisonment, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 17 and was warned that similar action would be taken if plaintiff attempted to exercise such rights in the future.

19. Defendants John Doe #4, John Doe #5, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 18.

20. Defendants John Doe #5, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 18 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally failed to train, instruct, supervise and control defendant John Doe #4. Defendants Wilson and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #5; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

21. As a further direct and proximate result of such unlawful arrest and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, pain, suffering, deprivation of freedom, mental anguish and humiliation and incurred medical expenses.

WHEREFORE, plaintiff demands judgment against defendants in the amount of $10,000 as compensatory damages and $10,000 as exemplary damages.

/s/ R. A. Earle
RICHARD A. EARLE
1200 Seventeenth Street, N.W.
Washington, D. C. 20036
223-4040

Of Counsel:

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed April 13, 1973]

Civil Action No. 392-71

MICHAEL H. MARSH,
Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.
Defendants

MOTION TO CERTIFY ACTION TO SUPERIOR COURT

Come now the defendants Hollingsworth, Heane, Wilson, and the District of Columbia, by and through their attorneys, and move the Court to certify this action to the Superior Court of the District of Columbia pursuant to Section 11-922(b), D. C. Code, 1967 ed., Supp. V, for the following reasons:

1. The instant action is not one which can properly be brought against defendants under 42 U.S.C. §§ 1983 and 1985 as indicated by the Supreme Court of the United States in District of Columbia v. Carter, —— U.S. —— (Decided January 10, 1973).

2. It is respectfully submitted that the instant action will not justify a judgment in excess of $10,000.00.

/s/ C. Francis Murphy
C. FRANCIS MURPHY
Corporation Counsel, D. C.

/s/ John A. Earnest
JOHN A. EARNEST
Assistant Corporation Counsel,
D. C.
/s/ Marcus P. McGraw
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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed April 23, 1973]

Civil Action No. 392-71

MICHAEL H. MARSH,

Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.

Defendants

ANSWER IN OPPOSITION TO MOTION OF DEFENDANTS TO CERTIFY ACTION TO SUPERIOR COURT

Comes now the plaintiff, Michael H. Marsh, by and through his attorney, and opposes the motion of Defendants to Certify Action to Superior Court on the ground that, the decision in *District of Columbia* v. *Carter*, —— U.S. —— 41 U.S.L.W. 4127 (U.S. Jan. 10, 1973) notwithstanding, jurisdiction is in this Court pursuant to 28 U.S.C. § 1331(a).

/s/ R. A. Earle
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1200 Seventeenth Street, N.W.
Washington, D. C. 20036
Telephone: 202/223-4040
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[Received Apr. 23, 1973, Civil Proceedings Division, Corporation Counsel's Office]